

**ADDENDUM TO  
SETTLEMENT AGREEMENT AND RELEASES  
BETWEEN  
BROWN WOOD PRESERVING CO., INC  
AND  
JAMES GRAHAM BROWN FOUNDATION, INC.**

**EFFECTIVE SIGNING DATE: JUNE 1, 2008**

THIS AMENDMENT ("Amendment") is made and is effective as of the 1<sup>st</sup> day of June, 2008 ("Effective Date"), of the SETTLEMENT AGREEMENT AND RELEASES ("Agreement") between BROWN WOOD PRESERVING CO., INC. ("BROWN WOOD"), a Kentucky corporation formed in 1980 (see Articles of Incorporation attached as Exhibit A to the Agreement) with its offices at 6201 Campground Road, Louisville, Kentucky 40216, and JAMES GRAHAM BROWN FOUNDATION, INC. ("JGBF"), a Kentucky nonprofit corporation with its offices at 4350 Brownsboro Road, Suite 200, Louisville, Kentucky 40207.

The parties agree to amend the Agreement as follows.

**SECTION I: Paragraph 1.B.(i)** Paragraph 1.B.(i) is hereby deleted in its entirety and the following new paragraph is hereby inserted in lieu thereof:

1.B.(i) Brown Wood does not, by November 1, 2008, enter into a final judicial Consent Decree with EPA and ADEM on the docket of the United States District Court (and by November 1, 2008 thirty days elapse without appeal of the Consent Decree final judgment entry by any person or entity) to address environmental claims against Brown Wood by EPA and ADEM arising out of the Brownville Property ("Brown Wood Consent Decree"); or

In all other respects, the Agreement remains the same, and may not be modified except by written agreement of the parties.

**IN WITNESS WHEREOF**, the Parties have entered into this Agreement as of June 1, 2008.

BROWN WOOD PRESERVING CO., INC.

By: [Signature]  
Title: PRESIDENT

("Brown Wood")

COMMONWEALTH OF KENTUCKY )  
COUNTY OF Jefferson ) SS

Subscribed, sworn to, and acknowledged before me by DAVID STANLEY as  
PRESIDENT of the Brown Wood Preserving Co., Inc. this 14<sup>th</sup> day of  
July, 2008.

NOTARY PUBLIC, STATE AT LARGE

My commission expires 8-28-2010

JAMES GRAHAM BROWN FOUNDATION, INC.

By: [Signature]  
Title: Executive Director  
("JGBF")

COMMONWEALTH OF KENTUCKY )  
COUNTY OF Jefferson ) SS

Subscribed, sworn to, and acknowledged before me by Mason Rump who is the Exec. Director of James Graham Brown Foundation, Inc., this 17 day of July, 2008.

NOTARY PUBLIC, STATE AT LARGE

My commission expires 9-11-2008

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### **SETTLEMENT AGREEMENT AND RELEASES**

**THIS SETTLEMENT AGREEMENT AND RELEASES ("Agreement")** is entered into as of this 1st day of June, 2007, by and between **BROWN WOOD PRESERVING COMPANY, INC. ("BROWN WOOD")**, a Kentucky corporation formed in 1980 (see Articles of Incorporation attached as Exhibit A) with its offices at 6201 Campground Road, Louisville, Kentucky 40216, and **JAMES GRAHAM BROWN FOUNDATION, INC. ("JGBF")**, a Kentucky nonprofit corporation with its offices at 4350 Brownsboro Road, Suite 200, Louisville, Kentucky 40207 (the "Parties").

#### **RECITALS:**

A. In June 1980, JGBF sold to Brown Wood certain assets (but not stock), including real property and the right to use the name "Brown Wood Preserving Company" and variations thereof. Brown Wood is not related in any fashion to the previously existing Brown Wood Preserving Company owned and operated in Alabama and other states by the late James Graham Brown's companies, nor is Brown Wood related in any fashion to the JGBF. These assets sold in June 1980 by JGBF to Brown Wood included real property upon which the wood treating facility in Brownville, Alabama was and is located. Real property is presently owned by Brown Wood in Brownville, Alabama (the "Brownville Property") that includes the wood-treatment facility and is identified on Exhibit B hereto.

B. The United States Environmental Protection Agency ("EPA") and the Alabama Department of Environmental Management ("ADEM") asserted various environmental claims (the "Claims") against Brown Wood and JGBF alleging, among other things, that each is liable under environmental laws for the presence or releases of hazardous substances or hazardous waste constituents, namely, wood-treating chemicals, at or migrating from the Brownville Property. EPA and ADEM demanded cleanup of these hazardous substances, and threatened litigation under environmental laws against Brown Wood and JGBF.

C. EPA and ADEM on the one hand, and Brown Wood and JGBF on the other, are negotiating, as of the effective date of this Agreement, to execute judicial Consent Decrees ("Consent Decree") to address the Claims.

D. Brown Wood and JGBF agree to settle and resolve claims between them associated with the Brownville Property on the terms set forth in this Agreement.

**NOW, THEREFORE, Brown Wood and JGBF agree as follows:**

#### **SECTION I: EFFECTIVE DATE AND CONDITIONS OF VALIDITY**

##### **I. Effective Date.**

A. Subject to Section I, Paragraph I.B below, this Agreement shall be effective as of June 1, 2007.

documents all right, title and interest in the Brownville Property and all improvements thereon (excepting "Removed Assets" as defined in Section II, Paragraph 4 below) and related appurtenances to JGBF or its designee (hereinafter the "Closing").

2. **Payment.** At Closing, Brown Wood shall pay into an Escrow Fund designated by JGBF the sum of Three Hundred Thousand U.S. Dollars (\$300,000.00) for sole use by JGBF in connection with the remediation, removal and clean up at the Brownville Property.

3. **Termination of Activities at the Brownville Property.** Brown Wood shall, at its sole expense, terminate all of its business and other operations and activities at the Brownville Property, complete the activities required by Section II, Paragraph 4 below, and permanently leave the premises ("Termination Activities") by the date agreed to by Brown Wood in the Brown Wood Consent Decree. The date for completion of Termination Activities by Brown Wood shall be set forth in the Brown Wood Consent Decree ("Termination Activities Completion Date").

4. **Removal of Assets, Products and Inventory by Brown Wood.** On or before the Termination Activities Completion Date, Brown Wood shall, at its sole expense, remove from the Brownville Property in accordance with all laws those assets, including products, that are described on attached Exhibit C ("Removed Assets"). Brown Wood agrees to remove all product from the Brownville Property in T-9, T-10, T-11, T-15 and the two treating cylinders and leave these tanks and the two treating cylinders "broom clean" but expressly provides that it will not wash down or decontaminate said units. Brown Wood shall also remove all inventory from the Brownville Property. Brown Wood shall have no other responsibilities relating to removal of assets, materials or equipment at the Brownville Property. Brown Wood agrees to provide JGBF reasonable notice (24 hours) before Brown Wood begins work on the Removed Assets.

5. **Representations.** Brown Wood represents and warrants to JGBF that it has retained consultants to conduct a reasonable investigation and that to the best of its knowledge Brown Wood and its employees have not buried or hidden any hazardous wastes, solid wastes, trash or debris on the Brownville Property. As previously explained to JGBF, Brown Wood did fill certain ditches with fill dirt and did fill the basement of the main treating plant with aggregate and cement. Upon completion by Brown Wood of its obligations in Section II, Brown Wood shall have no responsibility or liability hereunder for remediation, removal or clean up of hazardous substances or wastes at the Brownville Property.

### **SECTION III: JGBF'S OBLIGATIONS**

1. **Remediation and Removal Activities.** Upon completion by Brown Wood of its obligations in Section II above, JGBF shall assume sole control and responsibility for all remediation, removal and clean up of the Brownville Property according to the JGBF Consent Decree. Pursuant to the JGBF Consent Decree, JGBF shall undertake any and all remediation/cleanup activities, shall direct all such activities, shall have exclusive control and responsibility for such activities and shall pay for all remediation, removal and cleanup costs associated with the Brownville Property.

(i) Any and all claims, causes of action, claims for relief, damages and demands of whatsoever kind or nature, whether known, unknown or unforeseen (including, but not limited to, and only by way of example: investigatory or cleanup costs; construction costs; diminution in property value; bodily injury or death; property damage; consequential damages; personal injury; lost profits; restitution; claims arising out of laws, regulations or ordinances whether previously enacted or hereinafter enacted; claims for damages to natural resources and the environment; claims under federal and state environmental laws and regulations, past, present and future, as amended, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. "9601 et seq., Resource Conservation and Recovery Act, 42 U.S.C. "6901, et seq., Safe Drinking Water Act, 42 U.S.C. " 300f et seq., Clean Water Act, 33 U.S.C. "1251 et seq., Clean Air Act, 42 U.S.C. "7401 et seq., Emergency Planning and Community Right-to-Know Act, 42 U.S.C. "11001 et seq., Toxic Substances Control Act, 15 U.S.C. "2601 et seq., the laws of the State of Alabama, common law claims and punitive damages) that Brown Wood had, now has, or may hereafter have, arising directly or indirectly out of, or in any way related to or based upon the Brownville Property or the Claims; and

(ii) Any and all claims and demands for consultants' fees, experts' fees, contractors' fees, court costs and attorneys' fees that Brown Wood had, now has or may hereafter have, arising directly or indirectly out of or in any way connected with or based upon the Brownville Property or the Claims.

**3. No Indemnification or Hold Harmless**

Nothing in this Agreement shall be construed as an agreement by either JGBF or Brown Wood to defend, indemnify or hold harmless the other Party (including the other Party's parents, predecessors, successors, subsidiaries, affiliates, shareholders, trustees, officers, employees, transferees, principals, agents and assigns ) from any and all claims, causes of action, claims for relief, damages and demands of whatsoever kind or nature, whether known, unknown or unforeseen.

**4. Entire Agreement.**

A. This Agreement incorporates by reference all Recitals set forth above as if fully set forth herein. The Parties acknowledge that this is a release of disputed and contested claims and the execution of this Agreement and payment of the consideration herein shall not be deemed as an admission of liability on the part of any Party. Except only as set forth in Section IV, Paragraph 4.B below, this Agreement constitutes the entire agreement and understanding between the JGBF and Brown Wood. This Agreement may not be amended, modified or supplemented in any respect except by a subsequent written agreement signed by Brown Wood and JGBF.

B. Notwithstanding any other provision of this Agreement to the contrary, nothing herein shall affect, modify, release or compromise any of the terms and conditions of the February 15, 1994 Cancellation of Lease Agreement for the formerly leased premises at 5200 Crittenden Drive, Louisville, KY, which remains in full force and effect.

JAMES GRAHAM BROWN FOUNDATION, INC.

By: \_\_\_\_\_

Title: Executive Director & Secretary  
("JGBF")

COMMONWEALTH OF KENTUCKY )  
COUNTY OF Jefferson ) SS  
)

Subscribed, sworn to, and acknowledged before me by Mason, who is the Executive Director of James Graham Brown Foundation, Inc., this 16 day of August, 2007.

\_\_\_\_\_  
NOTARY PUBLIC, STATE AT LARGE

My commission expires 6-6-09

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**EXHIBIT A**





**EXHIBIT A**

**Trey Grayson  
Secretary of State**

**Certificate**

I, Trey Grayson, Secretary of State for the Commonwealth of Kentucky, do hereby certify that the foregoing writing has been carefully compared by me with the original thereof, now in my official custody as Secretary of State and remaining on file in my office, and found to be a true and correct copy of

ARTICLES OF INCORPORATION OF

BROWN WOOD PRESERVING COMPANY, INC. FILED MARCH 10, 1980.

ARTICLES OF AMENDMENT FILED APRIL 22, 1980.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at Frankfort, Kentucky, this 4th day of June, 2007.



Trey Grayson  
Secretary of State  
Commonwealth of Kentucky  
BWeber/0145084 - Certificate ID: 48766

145084

# Commonwealth of Kentucky

OFFICE OF  
SECRETARY OF STATE

FRANCES JONES MILLS  
Secretary



FRANKFORT,  
KENTUCKY

## CERTIFICATE OF INCORPORATION

I, FRANCES JONES MILLS, Secretary of State of the Commonwealth of Kentucky, do hereby certify that Articles of Incorporation of

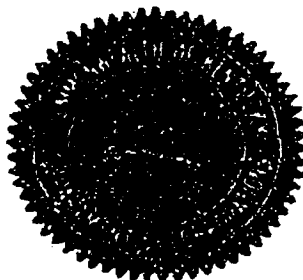
BROWN WOOD PRESERVING COMPANY, INC.

whose initial agent for process is KENNEDY HELM, JR.

3400 FIRST NATIONAL TOWER

and whose address is LOUISVILLE, KENTUCKY

duly signed according to law, have been filed in my office. I further certify that all taxes, fees and charges payable upon the filing of said Articles of Incorporation have been paid.



SECRETARY OF STATE

Given under my hand and seal of Office as Secretary of State, at Frankfort, Kentucky, this 10TH day of MARCH, 19 80

SECRETARY OF STATE

ASSISTANT SECRETARY OF STATE

003/011

06/04/2007 MON 11:25 FAX 502 564 4075 Sec of State KY Corp

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SECRETARY OF STATE OF KENTUCKY  
FRANKFORT, KENTUCKY

MAR 10 1980

ARTICLES OF INCORPORATION  
OF

BROWN WOOD PRESERVING COMPANY, INC.

145084  
SECRETARY OF STATE

RECEIVED

MAR 10 1980

\$25.00

Commonwealth of Kentucky

*[Signature]*  
SECRETARY OF STATE

164226

The undersigned, acting as incorporator of a corporation to be established under the Kentucky Business Corporation Act, adopts the following Articles of Incorporation for such corporation:

ARTICLE I

The name of the corporation shall be BROWN WOOD PRESERVING COMPANY, INC.

ARTICLE II

The existence of the corporation shall be perpetual.

ARTICLE III

The purposes of the corporation shall be to purchase, sell, process, treat, and in all other ways deal in and with lumber, wood products, and other property, real, personal and mixed, tangible and intangible, to the extent permitted by the laws of Kentucky or of any other state in which it may be, or become, qualified to do business, as well as to carry on any other lawful business whatsoever in connection with the foregoing

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or which is calculated, directly or indirectly, to promote the interests of the corporation or enhance the value of its properties. The corporation may exercise all powers granted by the Kentucky Business Corporation Act in the conduct of the above businesses.

ARTICLE IV

The stock of the corporation shall consist of two thousand (2000) shares with no par value per share. All of said shares shall constitute one class of stock. Each of said shares shall be entitled to an equal share in the earnings and the assets of the corporation, and the holder of each share of stock shall be entitled to cast one vote per share at all meetings of shareholders.

ARTICLE V

The shareholders of the corporation shall have no pre-emptive rights to subscribe to any shares of stock which were authorized but unissued at the time their shares were issued by the corporation nor shall the shareholders of the corporation have any pre-emptive rights to subscribe to treasury shares.

ARTICLE VI

The initial registered office of the corporation

shall be 3400 First National Tower, Louisville, Kentucky 40202, and the name of its initial registered agent at such address shall be Kennedy Helm, Jr., 3400 First National Tower, Louisville, Kentucky 40202. Either the resident office or the name of the registered agent may be changed without amendment of these Articles and to the extent and in the manner permitted by law.

#### ARTICLE VII

The affairs of the corporation shall be conducted by a Board of Directors of not less than three (3) nor more than nine (9) members, the exact number of which shall be provided by the By-laws of the corporation. The number of directors constituting the initial Board of Directors of the corporation is three (3), and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and shall qualify are:

<u>Name</u>	<u>Address</u>
Lowell D. Stanley	5817 Orion Road, Louisville, KY 40222
Frederick G. Heath	3603 Cascade Court, Louisville, KY 40222
J. P. Hamer	Oak View Heights, Kenova, W. VA 25530

#### ARTICLE VIII

The private property of the shareholders shall not be subject to the payment of corporation debts or liabilities.

ARTICLE IX

The name and address of the incorporator is:

**Name**

**Address**

Kennedy Helm, Jr.

3400 First National Tower  
Louisville, KY 40202

IN WITNESS WHEREOF, I, the undersigned incorporator, have  
set my hand, this 10<sup>th</sup> day of March, 1980.

**Kennedy Helms, Jr.**

COMMONWEALTH OF KENTUCKY )  
 ) SS.  
COUNTY OF JEFFERSON )

The foregoing Articles of Incorporation were acknowledged before me this 10<sup>th</sup> day of March 1980, by Kennedy Helm, Jr.

My commission expires: February 4, 1983

**NOTARY PUBLIC**

THIS INSTRUMENT PREPARED BY:

Kennedy Helm, Jr.  
STITES, McELWAIN & FOWLER  
3400 First National Tower  
Louisville, Kentucky 40202

145084 ✓

# Commonwealth of Kentucky

OFFICE OF  
SECRETARY OF STATE

FRANCES JONES MILLS  
Secretary



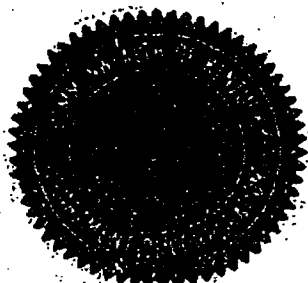
FRANKFORT,  
KENTUCKY

## CERTIFICATE OF AMENDMENT TO ARTICLES OF INCORPORATION

I, **FRANCES JONES MILLS**, Secretary of State of the Commonwealth of Kentucky, do hereby certify that Amended Articles of Incorporation of

BROWN WOOD PRESERVING COMPANY, INC.

amended pursuant to Kentucky Revised Statutes, 271A, (2000) duly signed and verified or acknowledged according to law, have been filed in my office by said corporation, and that all taxes, fees and charges payable upon the filing of said Articles of Amendment have been paid.



SECRETARY OF STATE

Given under my hand and seal of Office as Secretary of State, at Frankfort, Kentucky, this 22ND day of APRIL, 1980

\_\_\_\_\_  
SECRETARY OF STATE

\_\_\_\_\_  
ASSISTANT SECRETARY OF STATE

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FRANKFORT, KENTUCKY

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AMENDMENT TO  
ARTICLES OF INCORPORATION  
OF  
BROWN WOOD PRESERVING COMPANY, INC. Commonwealth of Kentucky

KNOW ALL MEN BY THESE PRESENTS THAT:

Pursuant to resolution adopted by the Board of Directors of Brown Wood Preserving Company, Inc., at a meeting on April 16, 1980, duly called and held at 3400 First National Tower, Louisville, Kentucky, notice of such meeting having been waived and a quorum of such Board of Directors having been present, the Board of Directors of Brown Wood Preserving Company, Inc., adopted the following amendment to the Company's Articles of Incorporation, no shares of such corporation having been issued since its incorporation:

1. Article IV of the Articles of Incorporation of this corporation is hereby amended, so that it shall read in its entirety as follows:

ARTICLE IV

From and after the date of filing of this Amendment the capital stock of the Corporation shall consist of: (a) One Hundred (100) shares of One Thousand (\$1,000.00) Dollars par value each, of preferred stock; (b) Two Thousand (2,000) shares of Class A common stock having no par value, and (c) Five Thousand (5,000) shares of Class B common stock having no par value.

As to all stockholders, stock of each class shall be transferrable only upon the books of the Corporation, and the Corporation shall have the right to enforce and carry out by transfer, or by refusal to transfer, upon its books the provisions of any written agreement entered into between stockholders, or between stockholders and the Corporation, which has been filed with the Secretary of



the Corporation and which provides for the purchase, repurchase, subordination, waiver of rights, or other alteration of rights of stockholders with reference to stock of any class, provided that an appropriate reference to such an agreement or a summary thereof has been endorsed upon the certificate evidencing such stock.

The common stock of either Class A or Class B may be issued for such price and upon such terms and at such times as may be determined by the Board of Directors.

**PREFERRED STOCK** - The holders of the preferred stock shall be entitled to receive a non-cumulative dividend at the rate of ten percent (10%) per annum per share, each fiscal year before the payment of any dividends upon either class of common stock in such fiscal year. The holders of the preferred stock shall be entitled to receive the par value thereof, without dividends, upon any liquidation of the Corporation, before any distribution to the holders of the common stock. Preferred stock shall be subject to call, redemption or purchase by the Corporation upon payment of the par value thereof, at any time.

The holders of the preferred stock shall not be entitled to vote with respect to any action as to which stockholder approval is required, except as required by law.

**COMMON STOCK** - Each outstanding share of Class A common stock and Class B common Stock shall be entitled to equal dividends after payment of dividends upon the preferred stock as above set out, and to equal distribution of all corporate assets upon any liquidation, without regard to class, after provision for the preferred stock as above set out.

The holders of Class A common stock shall be entitled to cast one vote per share at each meeting of shareholders, with cumulative voting privileges where more than one office is to be filled. The holders of Class B common stock shall not be entitled to vote at meetings of shareholders. In all respects, except the right

to vote as aforesaid. Class A and Class B common shares shall be equal.

2. Except as hereinabove set out, the Articles of Incorporation of the corporation remain in full force and effect.

IN TESTIMONY WHEREOF, this Amendment to Articles of Incorporation of Brown Wood Preserving Company, Inc., is signed and acknowledged by the president and the secretary of the corporation, this 21st day of April, 1980.

BROWN WOOD PRESERVING COMPANY, INC.

BY:

[Signature] President

and

BY:

[Signature] Secretary

STATE OF KENTUCKY )

COUNTY OF JEFFERSON )

SS

I, a Notary Public in and for the state and county aforesaid, do hereby certify that on this 21st day of April, 1980, personally appeared before me Lawell O. Stanley and Frederick B. Hamill, who being by me first duly sworn, declared that they are the President and Secretary, respectively, of Brown Wood Preserving Company, Inc.; that they signed the foregoing document as President and Secretary of the Corporation; and that the statements contained therein are true.

My commission expires: March 24, 1981

NOTARY PUBLIC Jefferson Co. Kentucky

THIS INSTRUMENT PREPARED BY:

KENNEDY HELM, JR.  
STITES, McELWAIN & FOWLER  
3400 First National Tower  
Louisville, Kentucky 40202

**EXHIBIT B**

**EXHIBIT B**

**PARCEL NO. 1:**

Begin at the Southeast corner of Section 14, Township 19 South, Range 12 West and run on a magnetic bearing of North 2 degrees 44 minutes West along the section line for a distance of 1925.2 feet to a point; thence deflect an angle to the left of 90 degrees and 00 minutes for a distance of 43.58 feet to a point; thence deflect an angle to the right of 95 degrees and 38 minutes for a distance of 104.8 feet to a point in the center of the paved road; thence deflect an angle to the left of 90 degrees and 20 minutes for a distance of 414.1 feet to a point; thence deflect an angle to the left of 95 degrees and 03 minutes for a distance of 222.0 feet to a point; thence deflect an angle to the right of 89 degrees and 56 minutes for a distance of 185.0 feet to a point; thence deflect an angle to the left of 89 degrees and 56 minutes for a distance of 716.2 feet to a point; thence deflect an angle to the left of 90 degrees and 04 minutes for a distance of 185.0 feet to a point; thence deflect an angle to the right of 90 degrees and 04 minutes for a distance of 255 feet to a point; thence deflect an angle to the right of 00 degrees and 48 minutes for a distance of 1173.9 feet to a point; thence deflect an angle to the left of 59 degrees and 43 minutes for a distance of 533 feet to a point; thence deflect an angle to the left of 121 degrees and 20 minutes for a distance of 582 feet to the point of beginning. LESS AND EXCEPT any portion of the above described property lying within the bounds of Brownville Road; Tabernacle Road and Brownville Street and any unnamed roads or streets.

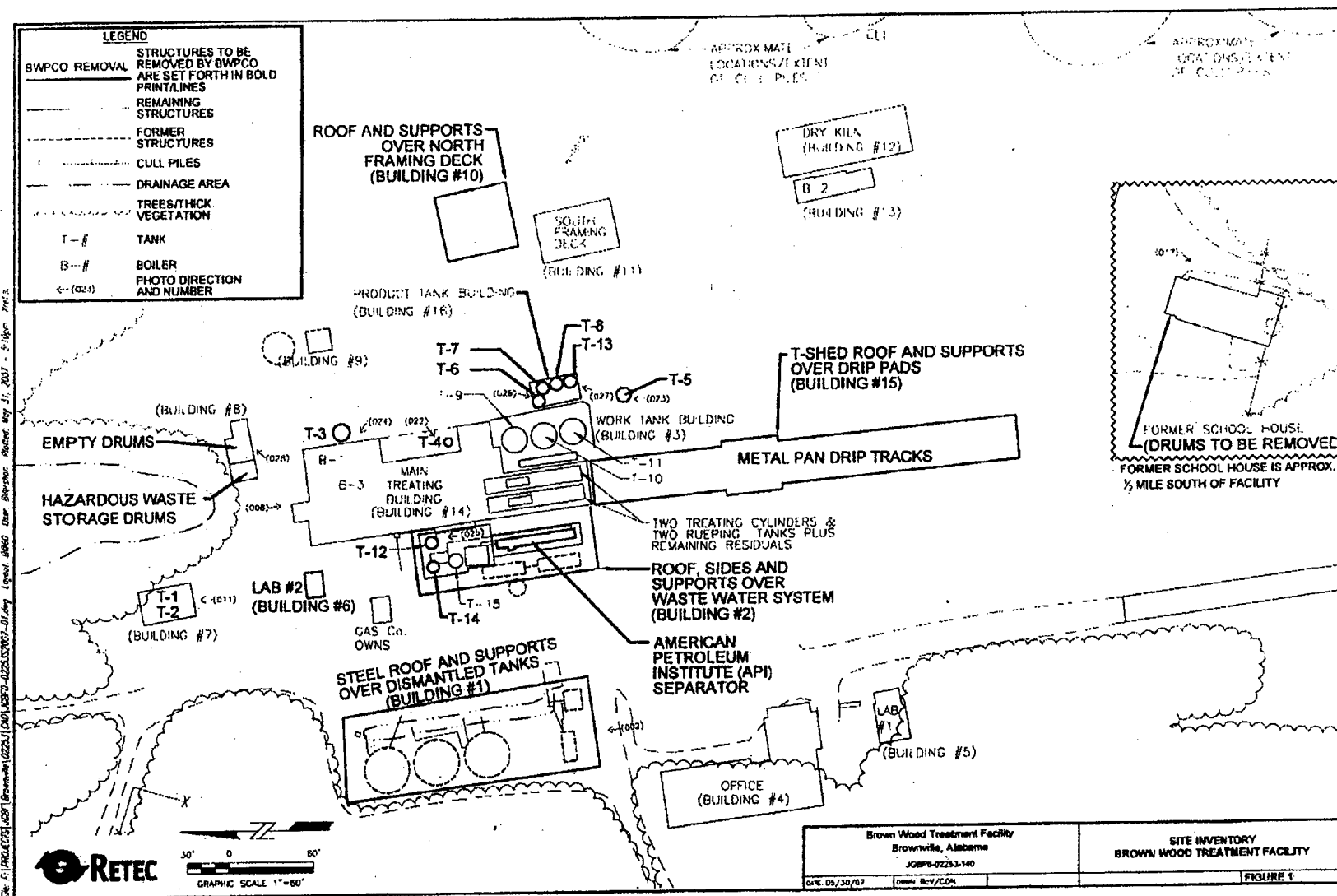
**PARCEL NO. 2:**

Begin at the Northeast corner of the Southeast Quarter of Section 14, Township 19 South, Range 12 West, in Tuscaloosa County, Alabama, and run on a magnetic bearing of South 2 degrees 44 minutes East for a distance of 450 feet to a point; thence deflect an angle to the right of 89 degrees and 56 minutes for a distance of 432 feet to the point of beginning; thence deflect an angle to the right of 90 degrees and 04 minutes for a distance of 255.0 feet to a point; thence deflect an angle to the left of 90 degrees and 04 minutes for a distance of 185.0 feet to a point; thence deflect an angle to the right of 90 degrees and 04 minutes for a distance of 716.2 feet to a point; thence with a deflection angle to the right of 89 degrees and 56 minutes run East a distance of 185 feet to a point; thence deflect an angle to the left of 90 degrees and 04 minutes for a distance of 222.0 feet to a point; thence deflect an angle to the right of 20 degrees and 17 minutes for a distance of 987.4 feet to a point; thence deflect an angle to the left of 85 degrees and 33 minutes for a distance of 1879.48 feet to a point; thence deflect an angle to the right of 16 degrees and 30 minutes for a distance of 534.5 feet to a point; thence deflect an angle to the right of 24 degrees and 39 minutes for a distance of 75 feet to a point; thence deflect an angle to the left of 63 degrees and 25 minutes for a distance of 112 feet to a point; thence deflect an angle to the left of 116 degrees and 35 minutes for a distance of 803.0 feet to a point; thence deflect an angle to the right of 90 degrees and 00 minutes for a distance of 150 feet to a point; thence deflect an angle to the left of 90 degrees and 00 minutes for a distance of 2938 feet to a point; thence deflect an angle to the left of 90 degrees and 00 minutes for a distance of 515 feet to a point; thence deflect an angle to the left of 74 degrees and 00 minutes for a distance of 64.83 feet to a point in the center of the public road; thence deflect an angle to the right of 98 degrees and 02 minutes for a distance of 207.83 feet to a point, being in the center of the intersection, said point being the point of beginning.

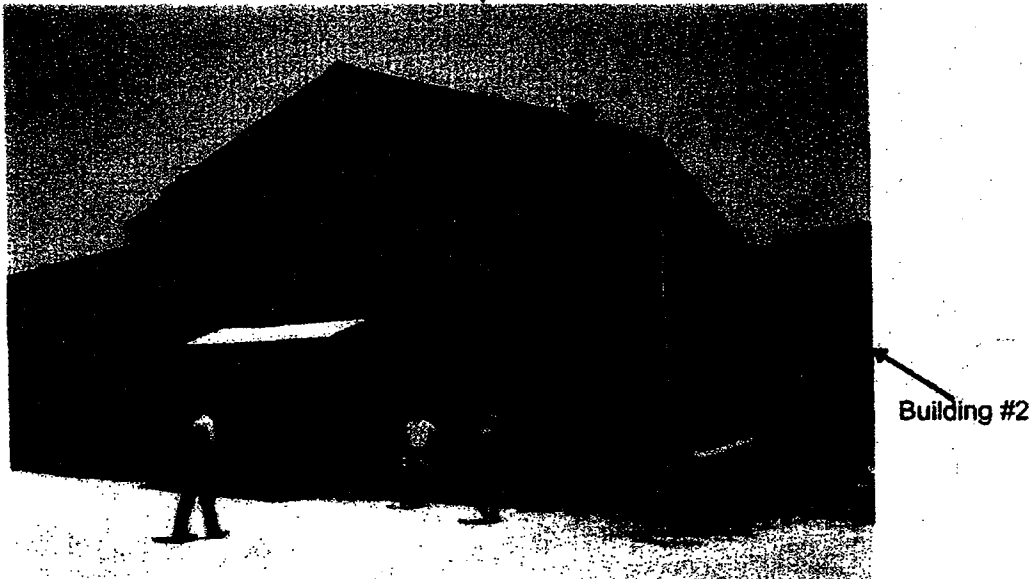
PARCEL NO. 3

Begin at the Southeast corner of Section 14, Township 19 South, Range 12 West, in Tuscaloosa County, Alabama, and go West along the Section line approximately 375 feet to the West right of way of Tabernacle Road to the point of beginning; thence West along the section line approximately 160 feet to the East boundary of the M & G Railroad Right of Way; thence Northwest along said right of way approximately 1015 feet to the boundary line of the property described in Deed Book 1214, at page 489 in the Probate Office of Tuscaloosa County, Alabama; thence Northeastly approximately 245 feet along said boundary line to a point; thence North along said boundary approximately 35 feet to the South boundary of the Brownville Road right of way; thence Easterly along said right of way approximately 165 feet to the West boundary of the Tabernacle Road right of way; thence South along the West boundary of the Tabernacle Road right of way approximately 1085 feet to the point of beginning. All in the Southeast Quarter of the Southeast Quarter of Section 14, Township 19 South, Range 12 West, Tuscaloosa County, Alabama.

**EXHIBIT C**



**Items to be Removed by Brown Wood Preserving Co., Inc.  
May 10, 2007 Site Walk  
Brownville, Alabama**



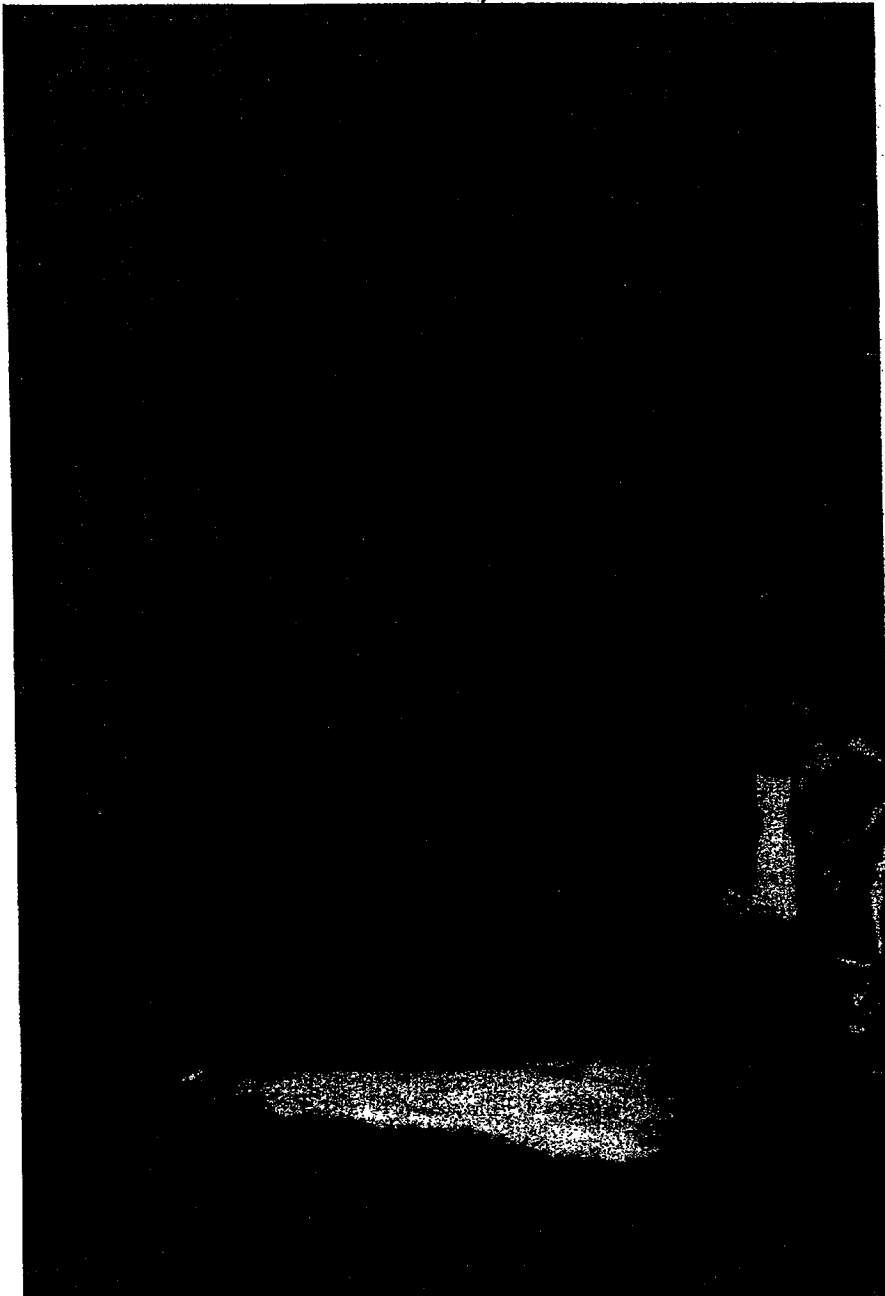
**Photo # 001 – Building # 2 on the right side of this photo - Wastewater System Building, roof, sides and supports shall be removed from site.**



**Photo # 002 – Building #1, roof and supports over dismantled tanks shall be removed from site.**

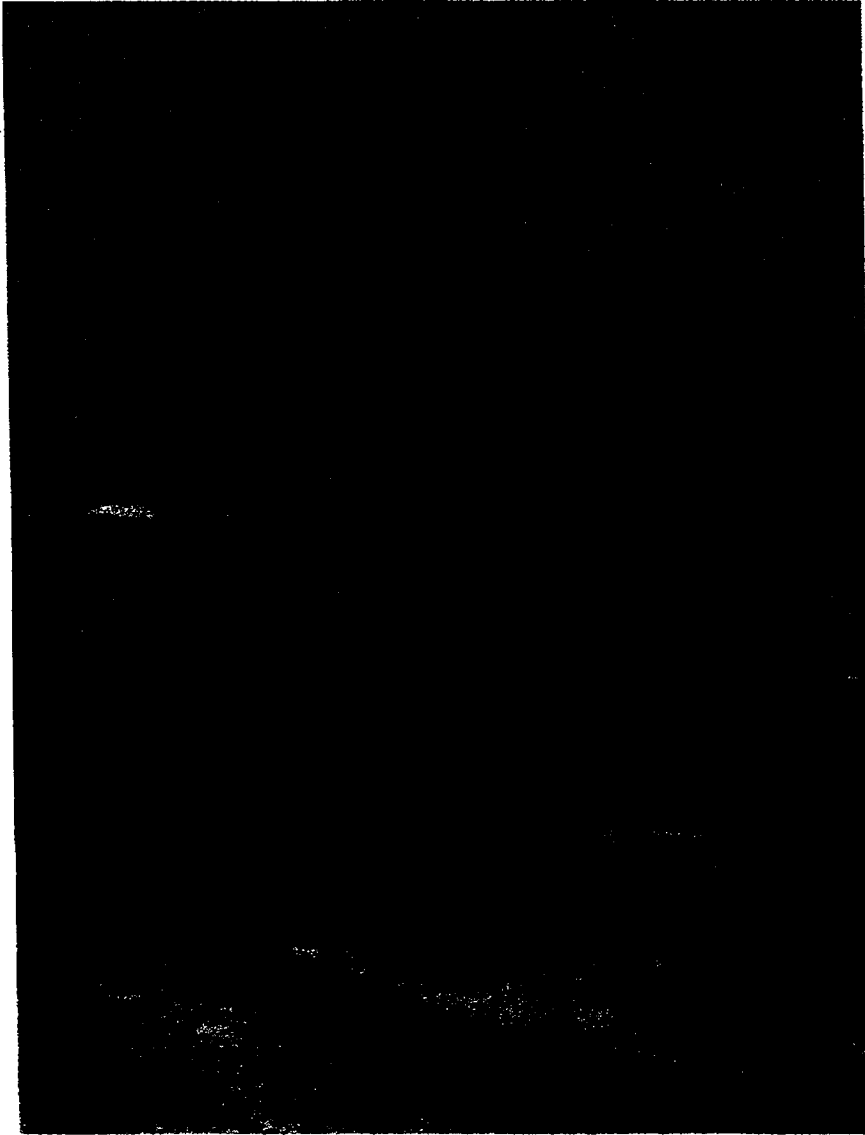


**Items to be Removed by Brown Wood Preserving Co., Inc.  
May 10, 2007 Site Walk  
Brownville, Alabama**



**Photo # 024 – Tank T-3 (Water Tank) outside NE corner of Treatment building  
(Building #14) and contents shall be removed from site.**

**Items to be Removed by Brown Wood Preserving Co., Inc.  
May 10, 2007 Site Walk  
Brownville, Alabama**



**Photo 023 - Tank T-5 (Unused Tank), located outside SE corner of Work Tank Building (Building #3) shall be removed from site.**

**Items to be Removed by Brown Wood Preserving Co., Inc.  
May 10, 2007 Site Walk  
Brownville, Alabama**

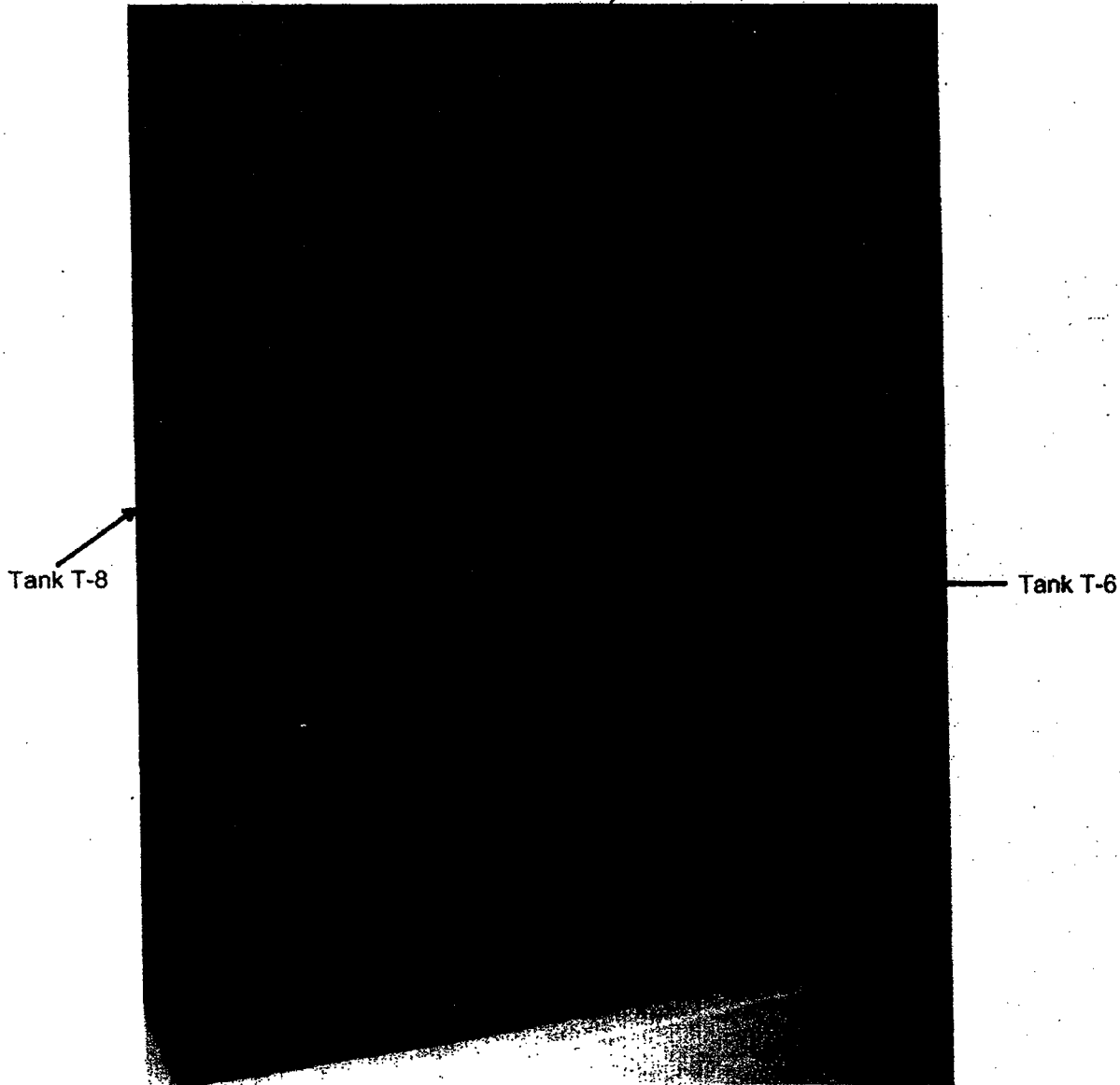
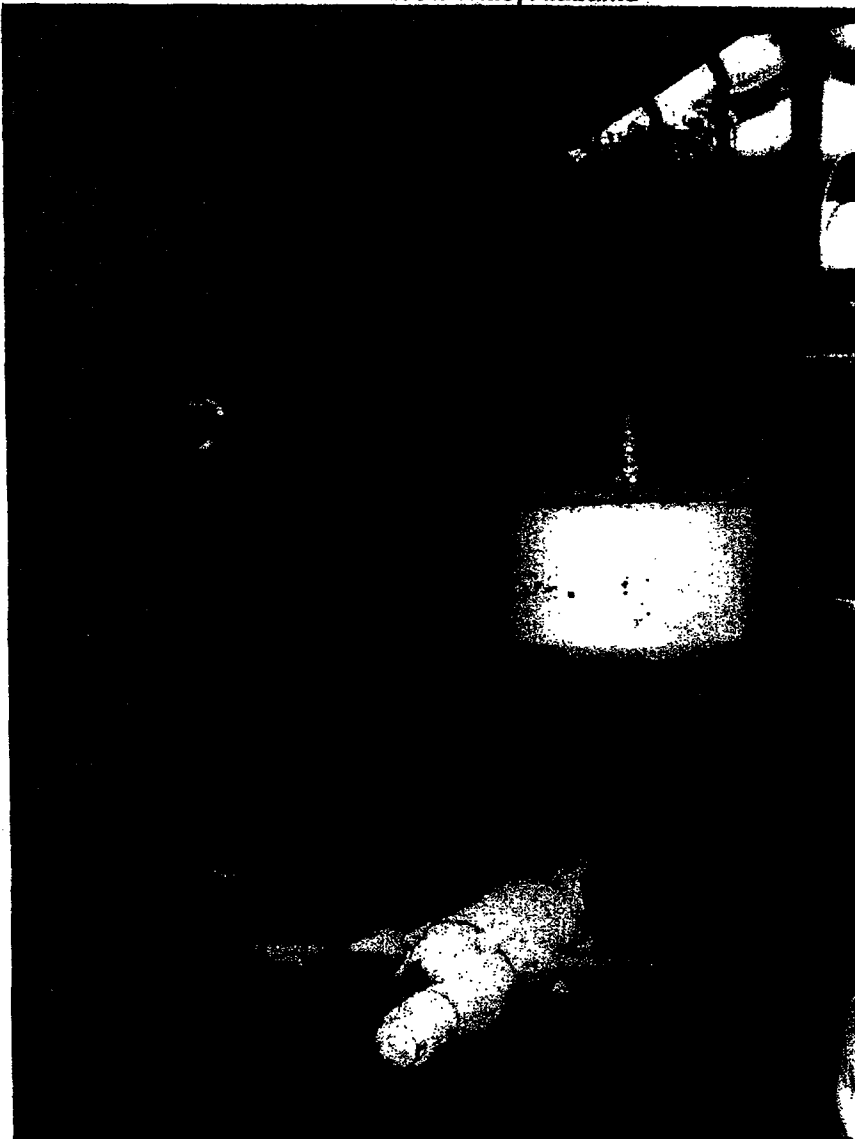


Photo 026 – Tank T-6, [Diesel Fuel Tank ("CCA Conc" label outdated)] in center of photo and Tank T-8 Penta Concentrate Tank at left side of photo shall be removed from site. Tanks are located inside Product Tank Building (Building #16). Tanks and contents shall be removed from site.

**Items to be Removed by Brown Wood Preserving Co., Inc.  
May 10, 2007 Site Walk  
Brownville, Alabama**



**Photo # 028 - Empty drums in shed (Building #8) to the north of Treating building shall be removed from site (shed to remain). Also to be removed from site: all drums in Hazardous Waste Storage Area in this building.**

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA and	)	
the ALABAMA DEPARTMENT OF	)	
ENVIRONMENTAL MANAGEMENT,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No.
v.	)	
	)	
BROWN WOOD PRESERVING COMPANY,	)	
INC. and the JAMES GRAHAM BROWN	)	
FOUNDATION, INC.	)	
	)	
Defendants.	)	
_____	)	

**CONSENT DECREE**

Plaintiffs United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), and the Alabama Department of Environmental Management, and Defendant Brown Wood Preserving Company, Inc. ("Brown Wood"), enter into this Consent Decree resolving claims set forth in a Complaint filed in the above-captioned matter.

**RECITALS**

A. Plaintiffs have filed a Complaint in this action against Brown Wood and co-Defendant James Graham Brown Foundation, Inc. ("JGBF") to obtain injunctive relief and assessment of civil penalties for violations of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6921 *et seq.*, the Alabama Hazardous Wastes Management and Minimization Act (AHWMMA), ALA. CODE § 22-30-1 (1975) *et seq.*, and the respective implementing regulations promulgated thereunder.

**APPENDIX 'B'**

B. Brown Wood owns and operates a wood treatment facility located at 16591 Brownville Road, Northport, Alabama ("the Facility"), where the Complaint alleges hazardous waste has been generated and illegally disposed of.

C. Brown Wood has entered into an Amended Settlement Agreement with JGBF, attached hereto as Appendix A and incorporated herein by reference, that provides for the transfer of the Facility from Brown Wood to JGBF and the subsequent cleanup of the Facility by JGBF pursuant to the terms of a separate Consent Decree that will be entered into among the Plaintiffs and JGBF.

D. By entering into this Consent Decree, Brown Wood does not admit any liability arising out of the transactions, occurrences or claims alleged in the Complaint.

E. The Parties acknowledge that this Consent Decree has been negotiated in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, without any adjudication of any issue of fact and upon consent and agreement of the parties to this Consent Decree,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355, and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1395, and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

3. Brown Wood waives any and all objections it may have to the Court's jurisdiction, and for purposes of this Consent Decree, agrees to submit to the Court's jurisdiction.

4. Notice of the commencement of this action was given to the State of Alabama pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

## **II. PARTIES BOUND**

5. The provisions of this Consent Decree shall apply to and be binding upon the United States, the State of Alabama, and Brown Wood, its officers, directors, employees, successors, assigns and upon all persons, firms, subsidiaries, divisions, or corporations acting under or for it.

6. No change in ownership, corporate or partnership status relating to the Facility will in any way alter the status of Brown Wood, or in any way alter the responsibilities of Brown Wood under this Consent Decree.

7. Brown Wood shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Brown Wood shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

8. In any action to enforce this Consent Decree, Brown Wood shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

9. JGBF is a signatory to this Consent Decree solely for the purpose of providing JGBF an opportunity to obtain judicial review, if necessary, of any claim or determination that Brown Wood has fully complied with its obligations under this Consent Decree, pursuant to the dispute

resolution provisions of this Consent Decree. JGBF shall have no rights or obligations under this Consent Decree except as specifically provided in Section IX (Dispute Resolution) of this Consent Decree.

### **III. DEFINITIONS**

10. Unless otherwise stated in this Consent Decree, the terms used in this Consent Decree are as defined in RCRA, 42 U.S.C. § 6901 *et seq.*, and AHWMA, ALA. CODE § 22-30-1 *et seq.*, and the respective implementing regulations promulgated thereunder. The terms used in this Consent Decree shall have the meanings set forth therein. In addition, when the terms listed below are used in this Consent Decree, the following definitions shall apply:

- a. "ADEM" shall mean the Alabama Department of Environmental Management.
- b. "Brown Wood" shall mean Defendant Brown Wood Preserving Company, Inc., a corporation organized and existing under the laws of the Commonwealth of Kentucky and licensed to do business in the State of Alabama.
- c. "Brownville Property" shall have the meaning set forth in the Amended Settlement Agreement between Brown Wood and JGBF, attached hereto as Appendix A.
- d. "Consent Decree" shall mean this Consent Decree, the attachments to this Decree, and all submissions made pursuant to this Decree.
- e. Unless otherwise indicated, the term "day" or "days" as used herein shall mean a calendar day or days.
- f. "EPA" shall mean the United States Environmental Protection Agency;



- g. "Facility" shall mean the facility, as that term is defined in 40 C.F.R. § 260.10, located at the Brownville Property.
- h. "Financial Information" shall mean those documents submitted to EPA by Brown Wood on or about December 1, 2006.
- i. The "JGBF Decree" shall have the meaning set forth in Paragraph 11 of this Consent Decree.
- j. "Plaintiffs" shall mean ADEM and the United States.
- k. "Amended Settlement Agreement" shall mean the Amended Settlement Agreement entered into by and between Brown Wood and JGBF, attached hereto as Appendix A and incorporated herein by reference.
- l. "United States" shall mean the United States of America, acting on behalf of EPA.

#### **IV. OBJECTIVES**

11. This Consent Decree, along with the Amended Settlement Agreement and another Consent Decree to be entered into by and among ADEM, the United States, and JGBF ("the JGBF Decree"), will result in the transfer of the Brownville Property from Brown Wood to JGBF, and the remediation by JGBF of hazardous waste contamination existing at the Brownville Property. The JGBF Decree will require JGBF to perform RCRA corrective action and RCRA closure of the Brownville Property. The JGBF Decree is attached hereto as Appendix B.

**V. COMPLIANCE**

12. By no later than 270 days following entry of this Consent Decree (the "Termination Activities Completion Date"), Brown Wood shall

- a. at its sole expense, remove from the Brownville Property, in accordance with all applicable federal, state, and local laws, those assets, including products, that are described in Exhibit C of the Amended Settlement Agreement ("Removed Assets");
- b. comply with all other requirements set forth in Section II, Paragraph 4, of the Amended Settlement Agreement;
- c. terminate all of its business and other operations and activities at the Brownville Property and permanently leave the premises in conformity with Section II, Paragraph 3, of the Amended Settlement Agreement; and
- d. transfer by recordable documents all right, title and interest in the Brownville Property and all improvements thereon (excepting Removed Assets) and related appurtenances to JGBF or its designee (hereinafter the "Closing").

13. At Closing, Brown Wood shall pay into an Escrow Fund designated by JGBF the sum of Three Hundred Thousand U.S. Dollars (\$300,000.00) for sole use by JGBF in connection with the remediation, removal and clean up at the Brownville Property.

14. Brown Wood shall provide JGBF reasonable notice, not less than 24 hours, before Brown Wood begins to remove the Removed Assets.

15. Within ten days of the Termination Activities Completion Date or within ten days of completion of all requirements specified in Paragraph 12, whichever occurs first, Brown Wood shall certify its compliance with the requirements of this Paragraph in writing via electronic or

overnight mail, and submit such certification as provided in Section XII (Notices and Submittals) of this Consent Decree. Such certification shall be signed by a Brown Wood official and shall include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all Appendices and that this document and its Appendices were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a materially false statement.

16. This Consent Decree in no way relieves Brown Wood of its responsibility to comply with all applicable federal, state, and/or local laws, regulations, and/or permits. Compliance with this Consent Decree shall not constitute a defense to any action pursuant to said laws, regulations, or permits.

#### **VI. CREATION OF DANGER; EMERGENCY RESPONSE**

17. Upon the occurrence of any incident or discovery of any condition that causes or threatens a release of hazardous waste from the Facility or an endangerment to human health or the environment, Brown Wood must immediately notify the National Response Center at 1-800-424-8802, along with any other required notifications to federal, state, or local agencies. Brown Wood must also contact EPA's RCRA Facility Manager, John Kroske, at 404-562-8613. Nothing in this Consent Decree limits the authority of EPA to take or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, hazardous wastes, or solid wastes, at or from the Facility.

## **VII. DEFAULT**

18. Brown Wood may request, and EPA and ADEM, in their sole discretion, may grant, up to two 15 day extensions of time for Brown Wood to perform any of the elements required by Section V (Compliance). Such extensions must be requested in writing no later than 30 days prior to the due date at issue and shall be submitted to the representatives of the United States and ADEM, with a copy to JGBF, as provided in Section XII (Notices and Submission) of this Consent Decree. A request for an extension of time does not toll the due date; if no response is received by the due date, the extension is deemed denied.

19. Notwithstanding the release of claims set forth in Paragraph 49, in the event that Brown Wood fails to fully comply with all obligations set forth in Section V of this Consent Decree within the specified time frame(s), or within any extension granted pursuant to Paragraph 18, such failure shall constitute a default. The failure of Brown Wood to timely submit the certification required pursuant to Paragraph 15 shall constitute a default. In the event that Brown Wood timely submits the certification required pursuant to Paragraph 15 but either the United States, ADEM, or JGBF contends that Brown Wood has failed to fully comply with all obligations set forth in Section V of this Consent Decree within the specified time frame(s), or within any extension granted pursuant to Paragraph 18, such party shall serve a written notice of default to all parties as provided in Section XII (Notices and Submission) of this Consent Decree within 30 days of the date of submission of the certification required pursuant to Paragraph 15.

20. In the event of default, Brown Wood shall be liable for a stipulated penalty of up to \$5,000 per day that Brown Wood fails to fully comply with all obligations set forth in Section V

of this Consent Decree within the specified time frame(s), unless excused under Section VIII (Force Majeure) or as provided in Paragraph 18.

21. Subject to the force majeure provisions of this Consent Decree, stipulated penalties under this Section shall begin to accrue on the day after performance is due and shall continue to accrue until performance is satisfactorily completed. Penalties shall accrue regardless of whether EPA or ADEM has notified Brown Wood that Plaintiffs have elected to seek enforcement of the Consent Decree upon default.

22. Brown Wood shall pay stipulated penalties to ADEM and the United States within 30 days of a written demand by either Plaintiff. Brown Wood shall pay 50 percent of the total stipulated penalty amount due to the United States and 50 percent to ADEM. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

23. ADEM or the United States may, in the unreviewable exercise of their discretion, reduce or waive stipulated penalties otherwise due that sovereign under this Consent Decree.

24. Stipulated penalties shall continue to accrue as provided in Paragraph 21, above, during any Dispute Resolution, but need not be paid until 30 days following the effective date of an agreement resolving the dispute or the receipt of EPA's or ADEM's decision or order resolving the dispute, in the amount determined to be owing, together with interest, to the United States or ADEM.

25. Brown Wood shall pay stipulated penalties owed to the United States by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to JGBF by the Financial Litigation Unit of the U.S. Attorney's Office

for the Northern District of Alabama, 1801 Fourth Ave. North, Birmingham, AL 35203-2101, telephone (205) 244-2015. At the time of payment, Brown Wood shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Brown Wood Preserving Co., Inc., *et al.*, and shall reference the civil action number and DOJ case number 90-7-1-07281/1, to the United States in accordance with Section XII of this Decree (Notices and Submittals); by email to \_\_\_\_\_ and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

26. Brown Wood shall pay stipulated penalties owed to ADEM by certified or cashier's check. Said penalty shall be made payable to the Alabama Department of Environmental Management and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

All checks shall reference Brown Wood's name and address, and the civil action number of this action.

27. If Brown Wood fails to pay stipulated penalties according to the terms of this Consent Decree, Brown Wood shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due through the date of payment. Nothing in this Paragraph shall be construed to limit ADEM or the United States from seeking any remedy otherwise provided by law for Brown Wood's failure to pay any stipulated penalties.

28. Subject to the provisions of Section XI of this Consent Decree (Effect of Decree; Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to ADEM or the United States for Brown Wood's violation of this Consent Decree.

29. The payment of stipulated penalties shall not alter or diminish Brown Wood's obligation to complete the performance of the actions described in this Consent Decree.

#### **VIII. FORCE MAJEURE**

30. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Brown Wood, of any entity controlled by Brown Wood, or of Brown Wood's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Brown Wood's best efforts to fulfill the obligation. The requirement that Brown Wood exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Brown Wood's financial inability to perform any obligation under this Consent Decree.

31. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Brown Wood shall provide notice orally or by electronic or facsimile transmission to the United States and ADEM within 72 hours of when Brown Wood first knew that the event might cause a delay. Within seven days thereafter, Brown Wood shall provide in writing to the United States and ADEM an explanation and description of the reasons for the delay; the anticipated duration of the delay; all

actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Brown Wood's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Brown Wood, such event may cause or contribute to an endangerment to public health, welfare or the environment. Brown Wood shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Brown Wood from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Brown Wood shall be deemed to know of any circumstance of which Brown Wood, any entity controlled by Brown Wood, or Brown Wood's contractors knew or should have known.

32. If the United States and ADEM agree that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by Plaintiffs for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. Plaintiffs will notify Brown Wood in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

33. If the United States and ADEM do not agree that the delay or anticipated delay has been or will be caused by a force majeure event, Plaintiffs will notify Brown Wood in writing of their decision.



34. If Brown Wood elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 days after receipt of Plaintiffs' notice.

35. Unanticipated or increased costs or expenses associated with the performance of Brown Wood's obligations under this Consent Decree shall not constitute a force majeure event. However, any delay in the performance of a compliance obligation resulting from the failure of a governmental permitting authority to issue a necessary permit or permit modification in a timely fashion shall qualify as a force majeure event, if Brown Wood has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or permit modification, including without limitation, submitting to the permitting authority all relevant and available information requested by such authority.

#### **IX. DISPUTE RESOLUTION**

36. The dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under or with respect to this Consent Decree. Brown Wood's failure to seek resolution of such a dispute under this Section shall preclude Brown Wood from raising any such issue as a defense to an action taken by ADEM or the United States as a result of Brown Wood's failure to fulfill its obligations under this Consent Decree.

37. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Brown Wood serves Plaintiffs with a written Notice of Dispute stating clearly the matter in dispute, or when the United States, ADEM, or JGBF serves a written notice of default pursuant to Paragraph 19. The period of informal negotiations shall not exceed 20 days from the date the dispute arises, unless that period is modified by written agreement. If

the parties cannot resolve a dispute by informal negotiations, then the position advanced by Plaintiffs shall be considered binding unless, within 15 days after the conclusion of the informal negotiation period, Brown Wood (or JGBF in the event that Plaintiffs reject a notice of default served by JGBF) invokes formal dispute resolution procedures as set forth below.

38. Formal Dispute Resolution. Brown Wood (or JGBF in the event that Plaintiffs reject a notice of default served by JGBF) shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the other parties a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Brown Wood's position and any supporting documentation relied upon by Brown Wood.

39. The United States, after consultation with ADEM (and Brown Wood or JGBF in event that the dispute involves a notice of default) shall serve a Statement of Position(s) within 45 days of receipt of the opening Statement of Position. Such Statement of Position(s) shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the submitting party. The Statement of Position served by the United States shall be binding unless Brown Wood (or JGBF in the event that Plaintiffs reject a notice of default served by JGBF) files a motion for judicial review of the dispute in accordance with the following paragraph.

40. Brown Wood (or JGBF in the event that Plaintiffs reject a notice of default served by JGBF) may seek judicial review of the dispute by filing with the Court and serving on Plaintiffs, in accordance with Section XII of this Consent Decree (Notices and Submittals), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 days of receipt

of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Brown Wood's (or JGBF's) position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

41. The United States, after consultation with ADEM, shall respond to Brown Wood's (or JGBF's) motion within the time period allowed by the Local Rules of this Court. If the dispute involves a notice of default, a response in support of the United States' position may also be filed by Brown Wood or JGBF, as the case may be. Brown Wood (or JGBF) may file a reply memorandum, to the extent permitted by the Local Rules.

42. Except as otherwise provided in this Consent Decree, the party challenging the United States' Statement of Position served pursuant to Paragraph 39 shall bear the burden of demonstrating that its position complies with this Consent Decree and furthers the expeditious achievement of the objectives of this Consent Decree and the JGBF Consent Decree. In any dispute regarding modification of this Consent Decree, the party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

43. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Brown Wood under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 24. If Brown Wood

does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Default).

**X. ACCESS; INFORMATION COLLECTION AND RETENTION**

44. The United States, ADEM, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the facility at the Brownville Property, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of any preliminary site evaluation or other related activities conducted by JGBF in association with JGBF's ultimate cleanup of the Brownville Property;
- b. verify any data or information submitted to ADEM in connection with any preliminary site evaluation or other related activities conducted by JGBF in association with JGBF's ultimate cleanup of the Brownville Property;
- c. obtain samples and, upon request, splits of any samples taken by JGBF or its representatives, contractors, or consultants in connection with any preliminary site evaluation or other related activities conducted by JGBF in association with JGBF's ultimate cleanup of the Brownville Property;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess JGBF's compliance with the JGBF Consent Decree.

45. Until five years after the termination of this Consent Decree, Brown Wood shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or

its contractors' or agents' possession or control, that relate in any manner to the treatment, storage, and/or disposal of hazardous waste at the Brownville Property. This information retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or ADEM, Brown Wood shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

46. At the conclusion of the information-retention period provided in the preceding Paragraph, Brown Wood shall notify the United States and ADEM at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or ADEM, Brown Wood shall deliver any such documents, records, or other information to EPA and/or ADEM. Brown Wood may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Brown Wood asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Brown Wood. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

47. Brown Wood may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to

any information that Brown Wood seeks to protect as CBI, Brown Wood shall follow the procedures set forth in 40 C.F.R. Part 2.

48. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or ADEM pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Brown Wood to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

#### **XI. EFFECT OF DECREE; RESERVATION OF RIGHTS**

49. This Consent Decree resolves the civil claims of the United States and ADEM against Brown Wood for the violations alleged in the Complaint filed in this action through the date of lodging of the Consent Decree.

50. The United States and ADEM reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 49. This Consent Decree shall not be construed to limit the rights of the United States or ADEM to obtain penalties or injunctive relief under RCRA, the corresponding state statutes, and their implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 49. The United States and ADEM further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Facility, whether related to the violations addressed in this Consent Decree or otherwise.

51. The United States and ADEM enter into this Consent Decree based, in part, on Brown Wood's representations regarding its financial condition. Notwithstanding any other

provision of this Consent Decree, the United States and ADEM reserve all rights to proceed against Brown Wood for the payment of civil penalties for the violations of RCRA alleged in the Complaint if the Financial Information provided by Brown Wood, or the financial certification made by Brown Wood in Section XIX is false or in any material respect, inaccurate. This right of the United States and ADEM shall be in addition to all other rights and causes of action, civil or criminal, that the United States or ADEM may have in such event.

52. Except as specifically provided by applicable statute or regulation, this Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Brown Wood is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits, and Brown Wood's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and ADEM do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Brown Wood's compliance with any aspect of this Consent Decree will result in compliance with provisions of RCRA, the corresponding state statutes, and their implementing regulations, or with any other provisions of federal, state, or local laws, regulations, or permits.

53. This Consent Decree does not limit or affect the rights of Brown Wood or of the United States or ADEM against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Brown Wood, except as otherwise provided by law.

54. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

55. Any information provided or obtained pursuant to this Consent Decree may be used by the United States or ADEM in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

## **XII. NOTICES AND SUBMITTALS**

56. Unless otherwise specified herein, all notices and submittals required pursuant to this Consent Decree shall be transmitted via electronic or overnight mail, to:

### **TO THE UNITED STATES OF AMERICA:**

Chief, Environmental Enforcement Section  
United States Department of Justice  
Environmental Enforcement Section  
601 D Street, NW (for overnight mail)  
Washington, D.C. 20044-7611  
P.O. Box 7611 (for postal service)  
Washington, D.C. 20004

Vera S. Kornylak  
Associate Regional Counsel  
United States Environmental Protection Agency  
Region 4  
Office of Environmental Accountability  
61 Forsyth St., S.W., 13<sup>th</sup> Floor  
Atlanta, Georgia 30303

### **TO ADEM:**

Rebecca E. Patty  
Associate General Counsel  
Alabama Department of Environmental Management  
1400 Coliseum Drive  
Montgomery, Alabama



TO THE JAMES GRAHAM BROWN FOUNDATION, INC.:

Kim K. Burke  
Taft Stettinius & Hollister LLP  
425 Walnut Street, Suite 1800  
Cincinnati, Ohio 45202-3957

TO THE BROWN WOOD PRESERVING COMPANY, INC.:

David A. Owen  
Greenebaum, Doll & McDonald PLLC  
300 W. Vine Street, Suite 1100  
Lexington, Kentucky 40507-1665

57. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

58. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

### **XIII. PUBLIC COMMENT**

59. Final approval of this Consent Decree by the United States is subject to the public notice and comment requirements under RCRA and 28 C.F.R. § 50.7. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States and ADEM reserve the right to withdraw or withhold consent to this Consent Decree if the comments received disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Brown Wood consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision

of the Decree, unless the United States or ADEM has notified Brown Wood in writing that it no longer supports entry of the Decree.

#### **XIV. COSTS**

60. Each party shall bear its own costs and attorneys' fees in this action, except that the United States and ADEM shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Brown Wood.

#### **XV. MODIFICATION**

61. Non-material modifications of this Consent Decree may be made by agreement of EPA, ADEM, and Brown Wood. All such modifications shall be made in writing.

62. Material modifications of this Consent Decree shall only be made through written agreement between the United States, ADEM, and Brown Wood, with approval of the Court.

#### **XVI. INCORPORATION**

63. All attachments to this Consent Decree are deemed incorporated into, and made an enforceable part of this Decree.

#### **XVII. RETENTION OF JURISDICTION**

64. The Court shall retain jurisdiction of this matter to enforce the terms and conditions of the Consent Decree and for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree until termination of the Consent Decree or further Order of the Court.

**XVIII. TERMINATION**

65. This Consent Decree shall terminate when Brown Wood has attained and demonstrated, to the satisfaction of the United States and ADEM, full compliance with all the requirements set out in this Decree, subject to the provisions of Section IX (Dispute Resolution). The parties agree to submit a joint motion for termination of the Consent Decree upon such a showing.

**XIX. CERTIFICATION**

66. By signing this Consent Decree, Brown Wood certifies that it has submitted to the United States Financial Information that fairly, accurately and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to the United States and the time Brown Wood executes this Consent Decree.

**XX. SIGNATORIES; SERVICE**

67. Brown Wood shall identify on the attached signature page the name, address and telephone number of an agent who is authorized to accept service by mail of all documents on behalf of Brown Wood with respect to all matters arising under or relating to this Consent Decree, including the Complaint and this Consent Decree. Brown Wood waives formal service of process requirements of Federal Rule of Civil Procedure 4 and any applicable local Rules of this Court, including but not limited to, service of a summons.

68. The undersigned representative of Brown Wood certifies that such representative is fully authorized to enter into this Consent Decree and to execute and to legally bind Brown Wood. Brown Wood shall provide a copy of this Consent Decree to each of its officers and

directors. The United States and the State of Alabama certify that signature of the Consent Decree by all of its undersigned representatives constitutes full authorization to enter into the terms and conditions of this Consent Decree, to execute the Consent Decree on behalf of the United States and the State of Alabama, and to legally bind the United States and the State of Alabama.

69. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

#### **XXI. FINAL JUDGMENT**

70. Upon approval and entry of this Consent Decree by the Court, and there being no just reason for delay, this Consent Decree shall constitute a final judgment pursuant to FED. R. CIV. P. 54(b) and 58 as among the parties to this Consent Decree.

Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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UNITED STATES DISTRICT JUDGE

FOR PLAINTIFF UNITED STATES OF AMERICA

DATE: 9-16-08

---

STEVEN A. KELLER  
Attorney  
Environment and Natural Resources  
Division  
United States Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-4352

ALICE H. MARTIN  
United States Attorney  
Northern District of Alabama

CAROLYN STEVERSON  
Assistant United States Attorney  
Northern District of Alabama

DATE:

9/9/08

2  
\_\_\_\_\_  
MARY J. WILKES  
Director and Regional Counsel  
Office of Environmental Accountability  
United States Environmental  
Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303

DATE:

9/9/08

\_\_\_\_\_  
VERA KORNYLAK  
Assistant Regional Counsel  
United States Environmental  
Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303

FOR PLAINTIFF ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

DATE: 9/3/08

REBECCA E. PATTY  
Associate General Counsel  
Alabama Department of Environmental Management  
1400 Coliseum Boulevard  
Montgomery, Alabama 36110-2059

FOR DEFENDANT BROWN WOOD PRESERVING CO., INC.

DATE: 9/9/08

[Signature]



FOR THE DEFENDANT JAMES GRAHAM BROWN FOUNDATION, INC.

Date: 9-3-08

1                                   **STATE OF ALABAMA**  
2                   **ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**  
3  
4                                   **CORRECTIVE ACTION AGREEMENT BETWEEN**  
5                   **ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**  
6                                   **AND**  
7                   **THE JAMES GRAHAM BROWN FOUNDATION, INC.**  
8

9                                   **I. PREFACE**

10           1.       The Alabama Hazardous Waste Management and Minimization Act  
11       ("AHWMMA"), §§ 22-30-1 through 22-30-24 Ala. Code (2006 Rplc. Vol.), was enacted,  
12       in part, to reduce public health and environmental hazards on existing commercial and  
13       industrial sites by providing a regulatory framework for developing and implementing  
14       environmental cleanup plans.

15           2.       The Alabama Department of Environmental Management ("ADEM" or "the  
16       Department") is the administrative agency of the State of Alabama having the power and  
17       duty to protect Alabama's environment and to administer and enforce the provisions of  
18       Title 22, Chapters 22A and 30 of the Ala. Code (2006 Rplc. Vol.). Specifically, pursuant  
19       to § 22-22A-4(n) Ala. Code (2006 Rplc. Vol.), the Department is responsible for the  
20       promulgation and enforcement of solid and hazardous waste regulations in accordance  
21       with the federal Solid Waste Disposal Act, 42 U.S.C. 3251, et. seq, as amended, including  
22       §§ 8001 through 11008, as amended. In addition, the Department is authorized to  
23       administer and enforce the provisions of the AHWMMA, §§ 22-30-1 through 22-30-24  
24       Ala. Code (2006 Rplc. Vol.) (the "Act") and regulations promulgated thereunder (the  
25       "Rules").

1           3.     The Department, acting through the Environmental Management  
2 Commission, has the authority pursuant to §§ 22-30-11(a), 22-30-19(b), and 22-22A-5(2)  
3 Ala. Code (2006 Rplc. Vol.) to promulgate, and revise when appropriate, rules and  
4 regulations, guidelines, criteria and standards for all hazardous waste management  
5 practices used to establish criteria for determining the rehabilitation program tasks that  
6 comprise a site rehabilitation program and the level at which a rehabilitation program task  
7 and a site rehabilitation program may be completed.

8  
9 In consideration of the mutual covenants and agreements hereinafter contained, it is agreed  
10 as follows:

11  
12                                   II. STIPULATIONS

13           1.     The Department has jurisdiction over the matters addressed in this  
14 Corrective Action Agreement ("Agreement").

15  
16           2.     The James Graham Brown Foundation (the "Foundation", also herein  
17 collectively known with ADEM as the "parties"), is the owner of the property located at  
18 16591 Brownville Road Northport, Tuscaloosa County, Alabama (hereinafter referred to as  
19 "Brownville Property" or "Site").

20  
21           3.     The Brownville Property is separate and distinct from the swamp area to the  
22 west. ADEM and the Foundation entered into a prior Agreement dated August, 1992 (the  
23 "1992 Agreement") to govern cleanup work performed by the Foundation in this "Swamp  
24 Area." Nothing in this Agreement affects, alters or modifies the terms of the 1992  
25 Agreement.

1           4.     The Brownville Property is the site of the wood preserving plant formerly  
2 owned and operated by W. P. Brown and Sons Lumber Co., Inc. The Foundation inherited  
3 the stock of W. P. Brown and Sons Lumber Co., Inc. in 1969. Upon dissolution of W. P.  
4 and Sons Lumber Co., Inc. in 1971, the Foundation acquired the assets of the company. In  
5 June 1980 the Foundation sold the assets and the real property of the wood preserving  
6 plant to Brown Wood Preserving Co., Inc. which operated the wood preserving plant since  
7 1980. The Foundation is not affiliated with the Brown Wood Preserving Co., Inc. As a  
8 result of the operation of the former wood preserving facility on the Brownville Property,  
9 there is contamination of wood treatment substances in and around the Brownville  
10 Property.

11  
12           5.     The Foundation acquired the Brownville Property in 2008, in accordance  
13 with a Settlement Agreement, as of June 1, 2007 between the Foundation and the Brown  
14 Wood Preserving Company. The Foundation, ADEM and United States on behalf of  
15 USEPA entered into a Consent Decree lodged in the United States District Court for the  
16 Northern District of Alabama, to govern the work required by this Agreement ("the  
17 Foundation Consent Decree"). This Agreement is intended to govern the work being  
18 performed by the Foundation to satisfy its obligations under this Consent Decree under the  
19 oversight of ADEM, and is intended to operate harmoniously with this Consent Decree.

20  
21           6.     This Agreement is entered into between the Department and the Foundation  
22 voluntarily to provide a mechanism, subject to the terms hereof, for the performance and  
23 oversight of investigative and/or corrective/remedial action at the Site by the Foundation.

1  
2           7.     This Agreement also provides for the payment of fees in accordance with  
3 ADEM Admin. Code ch. 335-1-6.  
4

5                           **III. ACTIVITIES TO BE PERFORMED**  
6

7           1.     During its performance of the below listed activities at the Site, the  
8 Foundation shall notify ADEM, in writing, of any newly discovered release(s) of  
9 hazardous waste or hazardous constituents discovered during the course of groundwater  
10 monitoring, field investigations, environmental audits, or other means, within fifteen days  
11 of discovery.  
12

13           2.     The Foundation shall perform a Comprehensive Investigation ("CI") for any  
14 areas of the site where a release of hazardous waste or hazardous constituents has occurred.  
15 Data obtained during historical environmental investigations will be considered as part of  
16 the CI. The CI must: (a) completely identify the concentration of hazardous constituents  
17 released and fully delineate the area where such hazardous constituents have come to be  
18 located; (b) fully characterize the nature and extent of contamination released; (c) be  
19 performed in a manner consistent with the most recent edition of the Alabama  
20 Environmental Investigation and Remediation Guidance; and, (d) be completed within one  
21 hundred and eighty days from the Effective Date of the Foundation Consent Decree.  
22 Existing or in progress investigation work by the Foundation, or its consultants, may be  
23 incorporated into the CI as long as it meets the aforesaid requirements.  
24

1           3.     For CIs expected to require greater than one hundred and eighty days to  
2 complete, the Foundation shall submit a Schedule of Compliance (SOC) subject to  
3 ADEM's approval/modification. The submittal of a CI SOC does not delay or otherwise  
4 postpone the Foundation's obligation to initiate the CI. The SOC must include: (a) a  
5 detailed narrative discussion which explains why the CI cannot be completed within one  
6 hundred and eighty days, and; (b) a detailed and chronological listing of milestones, with  
7 estimated durations, which provides sufficient information to track the progress of the  
8 investigation. The CI SOC shall be reviewed by the Department and the Foundation shall  
9 complete the CI in accordance with the approved CI SOC.

10           For a CI being conducted in accordance with an approved CI SOC, the Foundation  
11 must submit CI Progress Reports on a monthly basis. The CI Progress Reports must  
12 include: (a) a description of the CI activities completed during the reporting period; (b)  
13 summaries of any problems or potential problems encountered during the reporting period;  
14 (c) actions taken to rectify problems; (d) changes in relevant personnel; (e) projected work  
15 for the next reporting period; (f) any proposed revisions to the CI SOC (modifications of  
16 the CI SOC are subject to approval by ADEM); and, (g) a summary of any data collected  
17 during the reporting period, including: (i) the location of each sampling point identified on  
18 a site map; and, (ii) the concentration of each hazardous constituent detected at each  
19 sampling point.

20  
21           4.     The Foundation shall prepare and submit to the Department a  
22 Comprehensive Investigation (CI) Report within sixty days from the completion of  
23 investigation activities. The CI Report must provide a detailed description of all required  
24 elements of the investigation as described in the most recent edition of the Alabama

1 Environmental Investigation and Remediation Guidance (AEIRG). A fee of eleven  
2 thousand four hundred twenty-five dollars (\$11,425) shall be submitted with the report for  
3 review and processing.

4  
5 5. The Department shall review for completeness the CI Report submitted as  
6 required by Part III.4. of this Agreement. The Department shall notify the Foundation in  
7 writing whether the report is complete. If the report is incomplete, the Department shall  
8 (a) list the information necessary to make the report complete; and (b) specify in the notice  
9 of deficiency a date for submitting the necessary information. The Department may  
10 request any information necessary to clarify, modify, or supplement previously submitted  
11 material.

12  
13 6. The Foundation shall amend the CI report to correct any deficiencies or  
14 include any additional information requested under Part III.5. of this Agreement. The  
15 Foundation may dispute any deficiency or information request in accordance with Section  
16 XII of the Foundation Consent Decree and may request, subject to ADEM approval,  
17 additional time as reasonably necessary for the correction of deficiencies or provision of  
18 information.

19  
20 7. The CI report should indicate whether hazardous constituents, if any, have  
21 come to be located at any area of the Site, or beyond the Site where they have migrated  
22 beyond its borders, at concentrations exceeding those appropriate for the protection of  
23 human health and the environment. At the completion of the CI, a sufficient amount of  
24 data, including background conditions, should be available to support an assessment of the

1 baseline risks to human and ecological receptors. The Foundation will prepare a Risk  
2 Assessment ("RA") and shall provide the Department with information to determine levels  
3 of constituents that are protective of human health and the environment. The RA shall be  
4 conducted in accordance with the AEIRG and the Alabama Risk-Based Corrective Action  
5 (ARBCA) Guidance Manual, latest edition.

6  
7 8. A Remediation Plan (RP) shall be submitted to the Department within one  
8 hundred and twenty days following the Foundation's submittal of the RA Report and  
9 notification from the Department that a RP is required. The RP shall be submitted along  
10 with a request to place the plan on a forty-five day public notice period and shall include  
11 any applicable fees pursuant to ADEM Admin. Code ch. 335-1-6. The RP shall include  
12 the following information: (a) a general description of the site; (b) all applicable elements  
13 of the proposed remedy pursuant to the most recent edition of the AEIRG; (c) a general  
14 groundwater monitoring program, as appropriate; and, (d) a description of institutional  
15 controls and/or engineering controls necessary to achieve protection of human health and  
16 the environment, as appropriate. A fee of nineteen thousand seven hundred ninety dollars  
17 (\$19,790) shall be submitted with the RP for review and processing.

18  
19 For RPs expected to require greater than one hundred and twenty days to complete,  
20 the Foundation shall submit a Schedule of Compliance (SOC) subject to ADEM's  
21 approval/modification. The submittal of a RP SOC does not delay or otherwise postpone  
22 the Foundation's obligation to initiate the RP. The SOC must include: (a) a detailed  
23 narrative discussion which explains why the RP cannot be completed within 120 days, and;  
24 (b) a detailed and chronological listing of milestones, with estimated durations, which



1 provides sufficient information to track the progress of the plan development. The RP  
2 SOC shall be reviewed by the Department and the Foundation shall complete the RP in  
3 accordance with approved RP SOC.

4  
5 9. The Department shall review for completeness the RP submitted as required  
6 by Part III.8. of this Agreement. The Department shall notify the Foundation in writing  
7 whether the plan is complete. If the RP is incomplete, the Department shall (a) list the  
8 information necessary to make the RP complete; and (b) specify in the notice of deficiency  
9 a date for submitting the necessary information. The Department may request any  
10 information necessary to clarify, modify, or supplement previously submitted material.

11  
12 10. The Foundation shall amend the RP to correct any deficiencies or include  
13 any additional information requested under Part III.9. of this Agreement. The Foundation  
14 may dispute any deficiency or information request in accordance with Section XII of the  
15 Foundation Consent Decree and may request, subject to ADEM approval, additional time  
16 as reasonably necessary for the correction of deficiencies or provision of information.

17  
18 11. Once a RP is determined to be complete, the Department will provide the  
19 Foundation and the public, through a newspaper notice, the opportunity to submit written  
20 comments on the plan and request modifications to the plan no later than thirty days from  
21 the date of the notice. It will also, in response to a request or at its own discretion, hold a  
22 public hearing whenever such a hearing might clarify one or more issues concerning the  
23 RP. The Department will give public notice of the hearing at least thirty days before it  
24 occurs. Public notice of the hearing may be (but is not required to be) given at the same

1 time as notice of the opportunity for the public to submit written comments, and the two  
2 notices may be combined. The public comment period will automatically extend to the  
3 close of any public hearing. The hearing officer may also extend the comment period by  
4 so stating at the hearing. The Foundation shall remit a fee of three thousand nine hundred  
5 forty-five dollars (\$3,945) for the cost of the public hearing, if held.

6  
7 12. Upon approval of the RP, the applicable cleanup level(s) and corrective  
8 measure(s) determined for the areas specific to the RP will be deemed a condition of this  
9 Agreement.

10  
11 13. Within one hundred and twenty days after the RP is approved by the  
12 Department, the Foundation shall demonstrate financial assurance for completing the  
13 approved remedy.

14  
15 14. Within sixty days of completion of remediation of each area of  
16 contamination, the Foundation shall submit to the Department, by registered mail, a  
17 certification that the area of contamination, unit, or site, as applicable, has been remediated  
18 in accordance with the specifications in the approved RP.

19  
20 15. The Department shall review all reports and the required certification of  
21 compliance to demonstrate that no further action is required by the Foundation to protect  
22 human health and the environment. Upon concurrence by the Department, the Department  
23 shall issue to the Foundation a "Letter of Concurrence". If the RP includes the  
24 maintenance of engineering controls, remediation systems, or post-closure care, or if non-

1 permanent institutional controls are utilized, the Department may issue the Foundation a  
2 conditional "Letter of Concurrence". The continued maintenance of any engineering  
3 controls, land-use controls, remediation systems, or post-closure care as provided for in the  
4 RP is both a condition of the conditional Letter of Concurrence and this Agreement.

5  
6 16. The Site shall be deemed to have met the requirements for unrestricted  
7 residential use if the Site has been remediated to levels that (a) are derived in a manner  
8 consistent with ADEM/EPA guidelines for assessing human and environmental health  
9 risks from hazardous constituents; (b) are based on scientifically valid studies conducted in  
10 accordance with the Toxic Substances Control Act (TSCA) Good Laboratory Practice  
11 Standards, or equivalent; (c) for human health remediation levels to address carcinogens,  
12 represent a cumulative concentration associated with an excess upper bound lifetime  
13 cancer risk of  $1 \times 10^{-5}$  for carcinogens; and (d) for human health remediation levels to  
14 address noncarcinogens, represent a concentration to which the human population  
15 (including sensitive subgroups) could be exposed on a daily basis that is likely to be  
16 without appreciable risk of deleterious effects during a lifetime. To address the additive  
17 effects of multiple chemicals and multiple routes of exposure, a hazard index (HI) (sum of  
18 the hazard quotients (HQs) for each contaminant of concern (COC) and each complete  
19 route of exposure) of less than or equal to 1.0 must be used to evaluate non-carcinogens.

20  
21 17. If the Foundation cannot achieve the unrestricted use classification,  
22 appropriate restrictions on future Site use shall be applied. Restrictions shall include, but  
23 are not limited to, institutional and engineering controls. The restrictions imposed upon  
24 the Site will be media-specific and may vary according to Site -specific conditions. All

1 restrictions on use necessary to attain this standard shall be described in the certification of  
2 compliance or remediation plan. Such restrictions shall be a condition of the Letter of  
3 Concurrence and this Agreement.

#### 4 5 ***IV. QUALITY ASSURANCE***

6  
7 1. The Foundation agrees to follow ADEM and EPA guidance for sampling  
8 and analysis. Reports submitted pursuant to this Agreement shall describe quality  
9 assurance/quality control ("QA/QC") and chain of custody procedures for all sampling,  
10 monitoring, and analytical activities. Any deviations from standard QA/QC and chain of  
11 custody procedures must be approved by ADEM prior to implementation.

12  
13 2. The Foundation agrees to require that high quality data is obtained pursuant  
14 to this Agreement. The Foundation shall require that its laboratories perform such analysis  
15 according to the latest approved edition of "Test Methods for Evaluating Solid Waste,  
16 Physical/Chemical Methods (SW-846)," or other methods deemed satisfactory to ADEM  
17 which ADEM shall specify in writing. ADEM may reject any data that does not meet the  
18 requirements of standard EPA/ADEM analytical methods, or other methods approved by  
19 ADEM in writing, and may require re-sampling and additional analysis.

#### 20 21 ***V. REPORTING AND DOCUMENT CERTIFICATION***

22  
23 1. All documents submitted pursuant to this Agreement shall be in writing and  
24 shall be hand-delivered, sent by certified mail, return receipt requested, or by overnight  
25 express mail to:

1  
2 Waste Programs Branch - Land Division  
3 Alabama Department of Environmental Management  
4 1400 Coliseum Boulevard  
5 Montgomery, AL 36110-2059  
6 Mailing Address: P. O. Box 301463,  
7 Montgomery, AL 36130-1463  
8

9 2. Any report or other document submitted by the Foundation pursuant to this  
10 Agreement which makes any representation concerning the Foundation's compliance or  
11 noncompliance with any requirement of this Agreement shall be certified by a responsible  
12 corporate officer of the Foundation who meets the criteria described in ADEM Admin.  
13 Code r. 335-14-8-.02(2).  
14

15 3. The certification required by paragraph V.2. above, shall be in the form  
16 pursuant to paragraph 19 of the Foundation Consent Decree.  
17

18 4. Certain information required by this Agreement involves the practice of  
19 engineering and/or land surveying, as those terms are defined in, §§ 34-11-1 to 34-11-37  
20 Ala. Code (2006 Rplc. Vol.); and/or the practice of geology, as that term is defined in §§  
21 34-41-1 to 34-41-24 Ala. Code (2006 Rplc. Vol.). It is the responsibility of any person  
22 preparing or submitting such information to ensure compliance with these laws and any  
23 regulations promulgated thereunder, as may be required by the State Board of Registration  
24 for Professional Engineers and Land Surveyors and/or the State Board of Registration for  
25 Professional Geologists. All submissions, or parts thereof, which are required by State law

1 to be prepared by a licensed engineer, land surveyor, or geologist, must include the  
2 engineer's, land surveyor's, and/or geologist's signature and/or seal, as required by the  
3 applicable licensure laws.

4

5 This Agreement is executed in duplicate with each part being an original.

6

**JAMES GRAHAM BROWN**  
**FOUNDATION, INC.**

**ALABAMA DEPARTMENT OF**  
**ENVIRONMENTAL MANAGEMENT**

\_\_\_\_\_  
(Signature of Authorized Representative)

Mason B. Rummel  
(Printed Name)

\_\_\_\_\_  
Wm. Gerald Hardy  
Chief Land Division

Executive Director & Secretary  
(Printed Title)

June 23, 2008  
(Date Signed)

July 17, 2008

7